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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 WILLIAM BRECK, an Individual, pro se,  
10 Plaintiff,  
11 v.  
12 ROGER DOYLE, *et al.*,  
13 Defendants.

Case No. 3:12-cv-00649-MMD-VPC

ORDER

14 **I. SUMMARY**

15 Before the Court are two Motions to Dismiss. (ECF Nos. 130, 134.) The first was  
16 filed on behalf of David Clark, Kimberly Farmer, Laura Peters, Patrick King, J. Thomas  
17 Susich, Caren Cafferata-Jenkins, Kathleen Breckenridge (collectively, "Individual  
18 Defendants"), and the State Bar of Nevada ("SBN"). (ECF No. 130.) Plaintiff responded  
19 (ECF No. 141), and Individual Defendants and SBN replied (ECF No. 148).

20 The second motion to dismiss was filed on behalf of Defendants State of Nevada  
21 and the Nevada Supreme Court ("NSC"). (ECF No. 134.) Plaintiff responded (ECF No.  
22 141), and Defendants State of Nevada and NSC replied (ECF No. 153).

23 For the following reasons, the Court grants both motions to dismiss.

24 **II. BACKGROUND**

25 The Northern Nevada Disciplinary Panel ("Panel") found that Plaintiff violated  
26 Nevada Rules of Professional Conduct and recommended that he be barred from the  
27 practice of law in Nevada. (See ECF No. 124-3 at 1.) Plaintiff appealed the decision to  
28 the NSC and asserted a number of constitutional due process and equal protection

violations. (See ECF No. 130-3 at 41-75.) Meanwhile, Plaintiff initiated this action, and the Court abstained under *Younger*, staying the case. (See ECF No. 111 at 11.) The Court also dismissed Plaintiff's First Amended Complaint and granted leave to file a Second Amended Complaint ("SAC"). (*Id.*) Before Plaintiff filed his SAC, the NSC affirmed the Panel's sanctions, concluding that Plaintiff did not demonstrate "that his constitutional rights were violated during or by the proceedings." (ECF No. 130-2 at 4.) Plaintiff appealed to the United States Supreme Court, but the Court denied Plaintiff's petition for writ of certiorari. (ECF No. 124-3 at 1.) Plaintiff then filed his SAC, which contains claims for violations of the due process and equal protection clauses of the Fourteenth Amendment as well as claims for violation of the Privileges and Immunities Clause, Commerce Clause, and unconstitutional conditions doctrine, all stemming from his disciplinary proceeding. (ECF No. 124-1 at 6-8.)

### **III. LEGAL STANDARD**

#### **A. Fed. R. Civ. P. 12(b)(1) Legal Standard**

Rule 12(b)(1) of the Federal Rules of Civil Procedure allows defendants to seek dismissal of a claim or action for a lack of subject matter jurisdiction. Dismissal under Rule 12(b)(1) "is appropriate if the complaint, considered in its entirety, on its face fails to allege facts sufficient to establish subject matter jurisdiction." *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 984–85 (9th Cir. 2008). Although the defendant is the moving party in a motion to dismiss brought under Rule 12(b)(1), the plaintiff is the party invoking the court's jurisdiction. As a result, the plaintiff bears the burden of proving that the case is properly in federal court. *In re Ford Motor Co./Citibank (S.D.), N.A., Cardholder Rebate Program Litig.*, 264 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

#### **B. Fed. R. Civ. P. 12(b)(6) Legal Standard**

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to

1 relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
2 While Rule 8 does not require detailed factual allegations, it demands more than “labels  
3 and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft*  
4 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). “Factual allegations  
5 must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S.  
6 at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual  
7 matter to “state a claim to relief that is plausible on its face.” *Id.* at 570.

8 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to  
9 apply when considering motions to dismiss. First, a district court must accept as true all  
10 well-pleaded factual allegations—but not legal conclusions—in the complaint. *Id.* at 678.  
11 Mere recitals of the elements of a cause of action, supported only by conclusory  
12 statements, do not suffice. *Id.* Second, a district court must consider whether the factual  
13 allegations in the complaint allege a plausible claim for relief. *Id.* at 679. A claim is  
14 facially plausible when the plaintiff’s complaint alleges facts that allow a court to draw a  
15 reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 678.  
16 Where the complaint does not permit the court to infer more than the mere possibility of  
17 misconduct, the complaint has alleged—but has not shown—that the pleader is entitled  
18 to relief. *Id.* at 679. When the claims in a complaint have not crossed the line from  
19 conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at 570.

#### 20 **IV. DISCUSSION**

##### 21 **A. *Rooker-Feldman* Doctrine**

22 Defendants first argue that the SAC should be dismissed under Rule 12(b)(1)  
23 because this Court lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine.  
24 (ECF No. 130 at 6; ECF No. 134 at 4.) “*Rooker-Feldman* prohibits a federal district court  
25 from exercising subject matter jurisdiction over a suit that is a de facto appeal from a  
26 state court judgment.” *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004).  
27 The Ninth Circuit has provided guidance to determine whether a suit amounts to a de  
28 facto appeal: “If a federal plaintiff asserts as a legal wrong an allegedly erroneous

1 decision by a state court, and seeks relief from a state court judgment based on that  
2 decision, *Rooker–Feldman* bars subject matter jurisdiction in federal district court.” *Noel*  
3 *v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003). “If, on the other hand, a federal plaintiff  
4 asserts as a legal wrong an allegedly illegal act or omission by an adverse party,  
5 *Rooker–Feldman* does not bar jurisdiction.” *Id.* Thus, *Rooker-Feldman* deprives federal  
6 district courts of jurisdiction when plaintiffs allege legal errors by state courts but not  
7 when plaintiffs allege wrongful acts by defendants. *Kougasian*, 359 F.3d at 1142.

8 Here, Plaintiff alleges wrongful acts by Individual Defendants and SBN in support  
9 of his claims. (See, e.g., ECF No. 124-1 at 6 (alleging that Individual Defendants and  
10 SBN never notified Plaintiff of any preliminary hearing and never gave him the  
11 opportunity to review the evidence lodged against him).) While Plaintiff’s SAC contains  
12 allegations that the NSC erred in determining his constitutional rights were not violated  
13 (see, e.g., ECF No. 124-1 at 6; ECF No. 124-3 at 2), these allegations do not form the  
14 basis of his claims. Rather, his claims stem from the allegedly wrongful acts of Individual  
15 Defendants and SBN in connection with his disciplinary proceeding. Accordingly, this  
16 Court is not deprived of jurisdiction under *Rooker-Feldman*.

## 17 **B. Sovereign Immunity**

18 Defendants next argue that the SAC should be dismissed under Rule 12(b)(6)  
19 because sovereign immunity bars claims against the State of Nevada, SBN, and NSC  
20 (ECF No. 130 at 8-9; ECF No. 134 at 5.) “[U]nder the eleventh amendment a state or its  
21 agencies cannot be sued in federal court without its consent.” *O’Connor v. State of Nev.*,  
22 686 F.2d 749, 750 (9th Cir. 1982). “Nevada has explicitly refused to waive its immunity to  
23 suit under the eleventh amendment.” *Id.* (citing NRS § 41.031(3)). In addition, Defendant  
24 SBN enjoys eleventh amendment immunity as the investigative arm of Defendant NSC.  
25 *Id.* Naturally, the NSC enjoys eleventh amendment immunity as well. See *Simmons v.*  
26 *Sacramento Cty. Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003); *Louis v. Supreme*  
27 *Court of Nev.*, 490 F. Supp. 1174, 1180 (D. Nev. 1980). Accordingly, Defendants State

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1 of Nevada, SBN, and NSC are not proper parties to this action, and Plaintiff's SAC will  
2 be dismissed as to them.

### 3 **C. Immunity of Individual Defendants**

4 Individual Defendants argue that the SAC should be dismissed under Rule  
5 12(b)(6) because they are immune from civil liability in this action based on NSC Rule  
6 106. (ECF No. 130 at 7.) The rule states:

7 All participants in the discipline process, including grievants, bar counsel  
8 staff, members of disciplinary panels, diversion and mentoring participants,  
9 and witnesses, shall be absolutely immune from civil liability. No action  
10 may be predicated upon the filing of a disciplinary complaint or grievance  
11 or any action taken in connection with such a filing by any of the  
12 participants.

13 NSC Rule 106. The rule contains one exception: "[A]ny disclosures made pursuant to  
14 Rule 121(16) shall not be immune under this rule." *Id.*

15 The Individual Defendant were participants in Plaintiff's discipline process. (See  
16 ECF No. 141 at 11-15; ECF No. 174 at 3.) As such, NSC Rule 106 presumptively  
17 applies. Plaintiff has not alleged that Individual Defendants' conduct falls within the  
18 exception to NSC Rule 106 but instead alleges that his claims arise from Individual  
19 Defendants' conduct outside the discipline process. (ECF No. 141 at 11-15.) However,  
20 Individual Defendants' conduct as alleged by Plaintiff relates entirely to the discipline  
21 process. (See *id.*; ECF No. 174 at 3.) Moreover, any conduct that Plaintiff alleges  
22 occurred outside the scope of the discipline process would exceed the scope of the  
23 SAC. Plaintiff's SAC contains only constitutional claims related to the discipline process.  
24 (See ECF No. 124-1 at 6-8.) Accordingly, Individual Defendants are immune from civil  
25 liability and are not proper parties to this action. Plaintiff's SAC will be dismissed as to  
26 them.

### 27 **V. CONCLUSION**

28 The Court notes that the parties made several arguments and cited to several  
cases not discussed above. The Court has reviewed these arguments and cases and

1 determines that they do not warrant discussion as they do not affect the outcome of the  
2 motions.

3 It is hereby ordered that Individual Defendants and SBN's Motion to Dismiss (ECF  
4 No. 130) is granted.

5 It is further ordered that Defendants State of Nevada and NSC's Motion to  
6 Dismiss (ECF No. 134) is granted.

7 Plaintiff's pending Motion for Partial Summary Judgment (ECF No. 174) is denied  
8 as moot.

9 The Clerk is directed to enter judgment in favor of Defendants and close this  
10 case.

11 ENTERED THIS 25<sup>th</sup> day of January 2018.

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14 MIRANDA M. DU  
15 UNITED STATES DISTRICT JUDGE  
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